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HOUSE BILL 2285

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Fisher, Hatfield, Mitchell and Haigh; by request of Department of Licensing

Read first time 01/14/2002. Referred to Committee on Transportation.

1 AN ACT Relating to dyed special fuel; amending RCW 82.38.020,  
2 82.38.030, 82.38.065, and 82.38.170; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.38.020 and 2001 c 270 s 4 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Blended special fuel" means a mixture of undyed diesel fuel  
9 and another liquid, other than a de minimis amount of the liquid, that  
10 can be used as a fuel to propel a motor vehicle.

11 (2) "Blender" means a person who produces blended special fuel  
12 outside the bulk transfer-terminal system.

13 (3) "Bond" means a bond duly executed with a corporate surety  
14 qualified under chapter 48.28 RCW, which bond is payable to the state  
15 of Washington conditioned upon faithful performance of all requirements  
16 of this chapter, including the payment of all taxes, penalties, and  
17 other obligations arising out of this chapter.

18 (4) "Bulk transfer-terminal system" means the special fuel  
19 distribution system consisting of refineries, pipelines, vessels, and

1 terminals. Special fuel in a refinery, pipeline, vessel, or terminal  
2 is in the bulk transfer-terminal system. Special fuel in the fuel tank  
3 of an engine, motor vehicle, or in a railcar, trailer, truck, or other  
4 equipment suitable for ground transportation is not in the bulk  
5 transfer-terminal system.

6 (5) "Bulk transfer" means a transfer of special fuel by pipeline or  
7 vessel.

8 (6) "Bulk storage" means the placing of special fuel into a  
9 receptacle other than the fuel supply tank of a motor vehicle.

10 (7) "Department" means the department of licensing.

11 (8) "Dyed special fuel user" means a person authorized by the  
12 internal revenue code to operate a motor vehicle on the highway using  
13 dyed special fuel, in which the use is not exempt from the special fuel  
14 tax.

15 (9) "Evasion" or "evade" means to diminish or avoid the  
16 computation, assessment, or payment of authorized taxes or fees  
17 through:

18 (a) A knowing: False statement; omission; misrepresentation of  
19 fact; or other act of deception; ((or))

20 (b) An intentional: ((~~Omission~~)) Failure to file a return or  
21 report; or other act of deception; or

22 (c) The unlawful use of dyed special fuel.

23 (10) "Export" means to obtain special fuel in this state for sales  
24 or distribution outside the state.

25 (11) "Highway" means every way or place open to the use of the  
26 public, as a matter of right, for the purpose of vehicular travel.

27 (12) "Import" means to bring special fuel into this state by a  
28 means of conveyance other than the fuel supply tank of a motor vehicle.

29 (13) "International fuel tax agreement licensee" means a special  
30 fuel user operating qualified motor vehicles in interstate commerce and  
31 licensed by the department under the international fuel tax agreement.

32 (14) "Lessor" means a person: (a) Whose principal business is the  
33 bona fide leasing or renting of motor vehicles without drivers for  
34 compensation to the general public; and (b) who maintains established  
35 places of business and whose lease or rental contracts require the  
36 motor vehicles to be returned to the established places of business.

37 (15) "Licensee" means a person holding a license issued under this  
38 chapter.

1 (16) "Motor vehicle" means a self-propelled vehicle designed for  
2 operation upon land utilizing special fuel as the means of propulsion.

3 (17) "Natural gas" means naturally occurring mixtures of  
4 hydrocarbon gases and vapors consisting principally of methane, whether  
5 in gaseous or liquid form.

6 (18) "Person" means a natural person, fiduciary, association, or  
7 corporation. The term "person" as applied to an association means and  
8 includes the partners or members thereof, and as applied to  
9 corporations, the officers thereof.

10 (19) "Position holder" means a person who holds the inventory  
11 position in special fuel, as reflected by the records of the terminal  
12 operator. A person holds the inventory position in special fuel if the  
13 person has a contractual agreement with the terminal for the use of  
14 storage facilities and terminating services at a terminal with respect  
15 to special fuel. "Position holder" includes a terminal operator that  
16 owns special fuel in their terminal.

17 (20) "Rack" means a mechanism for delivering special fuel from a  
18 refinery or terminal into a truck, trailer, railcar, or other means of  
19 nonbulk transfer.

20 (21) "Refiner" means a person who owns, operates, or otherwise  
21 controls a refinery.

22 (22) "Removal" means a physical transfer of special fuel other than  
23 by evaporation, loss, or destruction.

24 (23) "Special fuel" means and includes all combustible gases and  
25 liquids suitable for the generation of power for propulsion of motor  
26 vehicles, except that it does not include motor vehicle fuel as defined  
27 in chapter 82.36 RCW, nor does it include dyed special fuel as defined  
28 by federal regulations, unless the use is in violation of this chapter.  
29 ~~((However, if the federal regulations authorize dyed special fuel to be  
30 used in highway vehicles, that usage is considered taxable under this  
31 chapter, unless otherwise exempted.))~~ If a person holds for sale,  
32 sells, purchases, or uses any dyed special fuel in violation of this  
33 chapter, all dyed special fuel held for sale, sold, purchased, stored,  
34 or used by that person is considered special fuel, and the person is  
35 subject to all presumptions, reporting, and recordkeeping requirements  
36 and other obligations which apply to special fuel, along with payment  
37 of any applicable taxes, penalties, or interest for illegal use.

1 (24) "Special fuel distributor" means a person who acquires special  
2 fuel from a supplier, distributor, or licensee for subsequent sale and  
3 distribution.

4 (25) "Special fuel exporter" means a person who purchases special  
5 fuel in this state and directly exports the fuel by a means other than  
6 the bulk transfer-terminal system to a destination outside of the  
7 state.

8 (26) "Special fuel importer" means a person who imports special  
9 fuel into the state by a means other than the bulk transfer-terminal  
10 system. If the importer of record is acting as an agent, the person  
11 for whom the agent is acting is the importer. If there is no importer  
12 of record, the owner of the special fuel at the time of importation is  
13 the importer.

14 (27) "Special fuel supplier" means a person who holds a federal  
15 certificate issued under the internal revenue code and authorizes the  
16 person to tax-free transactions on special fuel in the bulk transfer-  
17 terminal system.

18 (28) "Special fuel user" means a person engaged in uses of special  
19 fuel that are not specifically exempted from the special fuel tax  
20 imposed under this chapter.

21 (29) "Terminal" means a special fuel storage and distribution  
22 facility that has been assigned a terminal control number by the  
23 internal revenue service, is supplied by pipeline or vessel, and from  
24 which reportable special fuel is removed at a rack.

25 (30) "Terminal operator" means a person who owns, operates, or  
26 otherwise controls a terminal.

27 (31) "Two-party exchange" or "buy-sell agreement" means a  
28 transaction in which taxable special fuel is transferred from one  
29 licensed supplier to another licensed supplier under an exchange or  
30 buy-sell agreement whereby the supplier that is the position holder  
31 agrees to deliver taxable special fuel to the other supplier or the  
32 other supplier's customer at the rack of the terminal at which the  
33 delivering supplier is the position holder.

34 **Sec. 2.** RCW 82.38.030 and 2001 c 270 s 6 are each amended to read  
35 as follows:

36 (1) There is hereby levied and imposed upon special fuel users a  
37 tax at the rate computed in the manner provided in RCW 82.36.025 on

1 each gallon of special fuel, or each one hundred cubic feet of  
2 compressed natural gas, measured at standard pressure and temperature.

3 (2) The tax imposed by subsection (1) of this section is imposed  
4 when:

5 (a) Special fuel is removed in this state from a terminal if the  
6 special fuel is removed at the rack unless the removal is to a licensed  
7 exporter for direct delivery to a destination outside of the state, or  
8 the removal is to a special fuel distributor for direct delivery to an  
9 international fuel tax agreement licensee under RCW 82.38.320;

10 (b) Special fuel is removed in this state from a refinery if either  
11 of the following applies:

12 (i) The removal is by bulk transfer and the refiner or the owner of  
13 the special fuel immediately before the removal is not a licensee; or

14 (ii) The removal is at the refinery rack unless the removal is to  
15 a licensed exporter for direct delivery to a destination outside of the  
16 state, or the removal is to a special fuel distributor for direct  
17 delivery to an international fuel tax agreement licensee under RCW  
18 82.38.320;

19 (c) Special fuel enters into this state for sale, consumption, use,  
20 or storage if either of the following applies:

21 (i) The entry is by bulk transfer and the importer is not a  
22 licensee; or

23 (ii) The entry is not by bulk transfer;

24 (d) Special fuel is sold or removed in this state to an unlicensed  
25 entity unless there was a prior taxable removal, entry, or sale of the  
26 special fuel;

27 (e) Blended special fuel is removed or sold in this state by the  
28 blender of the fuel. The number of gallons of blended special fuel  
29 subject to tax is the difference between the total number of gallons of  
30 blended special fuel removed or sold and the number of gallons of  
31 previously taxed special fuel used to produce the blended special fuel;

32 (f) Dyed special fuel is used on a highway, as authorized by the  
33 internal revenue code, unless the use is exempt from the special fuel  
34 tax;

35 (g) Dyed special fuel is held for sale, sold, used, or is intended  
36 to be used in violation of this chapter;

37 (h) Special fuel purchased by an international fuel tax agreement  
38 licensee under RCW 82.38.320 is used on a highway; and

1       (~~(h)~~) (i) Special fuel is sold by a licensed special fuel  
2 supplier to a special fuel distributor, special fuel importer, or  
3 special fuel blender and the special fuel is not removed from the bulk  
4 transfer-terminal system.

5       (3) The tax imposed by this chapter, if required to be collected by  
6 the licensee, is held in trust by the licensee until paid to the  
7 department, and a licensee who appropriates or converts the tax  
8 collected to his or her own use or to any use other than the payment of  
9 the tax to the extent that the money required to be collected is not  
10 available for payment on the due date as prescribed in this chapter is  
11 guilty of a felony, or gross misdemeanor in accordance with the theft  
12 and anticipatory provisions of Title 9A RCW. A person, partnership,  
13 corporation, or corporate officer who fails to collect the tax imposed  
14 by this section, or who has collected the tax and fails to pay it to  
15 the department in the manner prescribed by this chapter, is personally  
16 liable to the state for the amount of the tax.

17       **Sec. 3.** RCW 82.38.065 and 1998 c 176 s 56 are each amended to read  
18 as follows:

19       A person may (~~not~~) operate or maintain a licensed or required to  
20 be licensed motor vehicle (~~(on a public highway of this state)~~) with  
21 dyed special fuel in the fuel supply tank (~~(unless)~~) only if the use is  
22 authorized by the internal revenue code and the person is either the  
23 holder of an uncanceled dyed special fuel user license issued (~~(to him~~  
24 ~~or her by the department)~~) or the use is exempt from the special fuel  
25 tax. A person may maintain dyed special fuel for a taxable use in bulk  
26 storage if the person is the holder of an uncanceled dyed special fuel  
27 user license issued under this chapter. The special fuel tax set forth  
28 in RCW 82.38.030 is imposed on users of dyed special fuel authorized by  
29 the internal revenue code to operate on-highway motor vehicles using  
30 dyed special fuel, unless the use is exempt from the special fuel tax.  
31 It is unlawful for any person to sell, use, hold for sale, or hold for  
32 intended use dyed special fuel in a manner in violation of this  
33 chapter.

34       **Sec. 4.** RCW 82.38.170 and 1998 c 176 s 70 are each amended to read  
35 as follows:

36       (1) If any licensee fails to pay any taxes collected or due the  
37 state of Washington within the time prescribed by RCW 82.38.150 and

1 82.38.160, the licensee shall pay in addition to such tax a penalty of  
2 ten percent of the amount thereof.

3 (2) If it be determined by the department that the tax reported by  
4 any licensee is deficient it may proceed to assess the deficiency on  
5 the basis of information available to it and there shall be added to  
6 this deficiency a penalty of ten percent of the amount of the  
7 deficiency.

8 (3) If any licensee, whether or not he or she is licensed as such,  
9 fails, neglects, or refuses to file a special fuel tax report required  
10 under this chapter, the department may, on the basis of information  
11 available to it, determine the tax liability of the licensee for the  
12 period during which no report was filed, and to the tax as thus  
13 determined, the department shall add the penalty and interest provided  
14 in subsection (2) of this section. An assessment made by the  
15 department pursuant to this subsection or to subsection (2) of this  
16 section shall be presumed to be correct, and in any case where the  
17 validity of the assessment is drawn in question, the burden shall be on  
18 the person who challenges the assessment to establish by a fair  
19 preponderance of the evidence that it is erroneous or excessive as the  
20 case may be.

21 (4) If any licensee establishes by a fair preponderance of evidence  
22 that his or her failure to file a report or pay the proper amount of  
23 tax within the time prescribed was due to reasonable cause and was not  
24 intentional or willful, the department may waive the penalty prescribed  
25 in subsections (1), (2), and (3) of this section.

26 (5) If any licensee files a false or fraudulent report with intent  
27 to evade the tax imposed by this chapter, there shall be added to the  
28 amount of deficiency determined by the department a penalty equal to  
29 twenty-five percent of the deficiency, in addition to the penalty  
30 provided in subsection (2) of this section and all other penalties  
31 prescribed by law.

32 (6) Any special fuel tax, penalties, and interest payable under  
33 this chapter shall bear interest at the rate of one percent per month,  
34 or fraction thereof, from the first day of the calendar month after the  
35 amount or any portion thereof should have been paid until the date of  
36 payment: PROVIDED, That the department may waive the interest when it  
37 determines that the cost of processing the collection of the interest  
38 exceeds the amount of interest due.

1 (7) Except in the case of violations of filing a false or  
2 fraudulent report, if the department deems mitigation of penalties and  
3 interest to be reasonable and in the best interests of carrying out the  
4 purpose of this chapter, it may mitigate such assessments upon whatever  
5 terms the department deems proper, giving consideration to the degree  
6 and extent of the lack of records and reporting errors. The department  
7 may ascertain the facts regarding recordkeeping and payment penalties  
8 in lieu of more elaborate proceedings under this chapter.

9 (8) Except in the case of a fraudulent report or of neglect or  
10 refusal to make a report, every deficiency shall be assessed under  
11 subsection (2) of this section within five years from the twenty-fifth  
12 day of the next succeeding calendar month following the reporting  
13 period for which the amount is proposed to be determined or within five  
14 years after the return is filed, whichever period expires the later.

15 (9) Any licensee against whom an assessment is made under the  
16 provisions of subsection((s)) (2) or (3) of this section may petition  
17 for a reassessment thereof within thirty days after service upon the  
18 licensee of notice thereof. If such petition is not filed within such  
19 thirty day period, the amount of the assessment becomes final at the  
20 expiration thereof.

21 If a petition for reassessment is filed within the thirty day  
22 period, the department shall reconsider the assessment and, if the  
23 licensee has so requested in his or her petition, shall grant such  
24 licensee an oral hearing and give the licensee ten days' notice of the  
25 time and place thereof. The department may continue the hearing from  
26 time to time. The decision of the department upon a petition for  
27 reassessment shall become final thirty days after service upon the  
28 licensee of notice thereof.

29 Every assessment made by the department shall become due and  
30 payable at the time it becomes final and if not paid to the department  
31 when due and payable, there shall be added thereto a penalty of ten  
32 percent of the amount of the tax.

33 (10) Any notice of assessment required by this section shall be  
34 served personally or by certified or registered mail; if by mail,  
35 service shall be made by depositing such notice in the United States  
36 mail, postage prepaid addressed to the licensee at his or her address  
37 as the same appears in the records of the department.

1 (11) Any licensee who has had the licensee's special fuel license  
2 revoked shall pay a one hundred dollar penalty prior to the issuance of  
3 a new license.

4 (12) Any person who, upon audit or investigation by the department,  
5 is found to have not paid special fuel taxes as required by this  
6 chapter shall be subject to cancellation of all vehicle registrations  
7 for vehicles utilizing special fuel as a means of propulsion. Any  
8 unexpired Washington tonnage on the vehicles in question may be  
9 transferred to a purchaser of the vehicles upon application to the  
10 department who shall hold such tonnage in its custody until a sale of  
11 the vehicle is made or the tonnage has expired.

12 (13) Unless the use is exempt from the special fuel tax, or  
13 expressly authorized by the internal revenue code and this chapter, a  
14 person ((using)) having dyed special fuel in the ((propulsion)) fuel  
15 supply tank of a motor vehicle ((upon the highways of this state)) that  
16 is licensed or required to be licensed is subject to a civil penalty of  
17 ten dollars for each gallon of dyed special fuel placed into the supply  
18 tank of the motor vehicle, or one thousand dollars, whichever is  
19 greater. The civil penalty collected as a result of this subsection  
20 must be deposited in the motor vehicle fund. The penalties must be  
21 collected and administered under this chapter.

22 (14) A person who maintains dyed special fuel in bulk storage for  
23 an intended sale or use in violation of this chapter is subject to a  
24 civil penalty of ten dollars for each gallon of dyed special fuel, or  
25 one thousand dollars, whichever is greater, currently or previously  
26 maintained in bulk storage by the person. The civil penalty collected  
27 as a result of this subsection must be deposited in the motor vehicle  
28 fund. The penalties must be collected and administered under this  
29 chapter.

30 (15) For the purposes of enforcement of this section, the  
31 Washington state patrol or other commercial vehicle safety alliance-  
32 certified officers may inspect, collect, and secure samples of special  
33 fuel used in the propulsion of a vehicle operated upon the highways of  
34 this state to detect the presence of dye or other chemical compounds.

35 ((+15+)) (16) The Washington state patrol shall, by January 1,  
36 1999, develop and implement procedures for collection, analysis, and  
37 storage of fuel samples collected under this chapter.

1        (~~(16)~~) (17) RCW 43.05.110 does not apply to the civil penalties  
2 imposed under subsection (13) of this section.

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